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PACIFIC TELESIS
Group-Washington

August 8, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *WT Docket No. 95-157, RM-8643 - Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*

On behalf of Pacific Bell Mobile Services, please find enclosed an original and six copies of its *"Comments on Petitions for Reconsideration"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

GINA HARRISON/AFC

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Of

Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation	WT Docket No. 95-157 RM-8643

COMMENTS OF PACIFIC BELL MOBILE SERVICES ON PETITIONS FOR RECONSIDERATION

Seven parties filed petitions for reconsideration of the First Report and Order[1] in the above-captioned proceeding. As described in the following, Pacific Bell Mobile Services supports some petitions and opposes others.

I. THE COMMISSION SHOULD CLARIFY ITS PROCEDURES GOVERNING INVOLUNTARY RELOCATION.

AT&T Wireless Services, Inc., GTE Mobilenet, PCS Primeco, L.P., Pocket Communications Inc., Western Wireless Corporation, and the Cellular Telecommunications Industry Association ("Joint Petitioners") have requested that the Commission either require microwave incumbents to vacate their 2 GHz licenses immediately upon expiration of the mandatory negotiation period or automatically convert their licenses to secondary status immediately upon expiration of the mandatory

[1] Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, RM-8643, First Report and Order and Further Notice of Proposed Rulemaking, released April 30, 1996 ("Order").

negotiation period.[2] We strongly support this request and agree with the Joint Petitioners that the record is sufficient to support this action.

This spectrum was reallocated to PCS. The Commission has carefully instituted a procedure for the relocation of incumbents. However, the rules do not address what time frame exists for an involuntary relocation and status of the incumbent's license during an involuntary relocation. This uncertainty can allow an involuntary relocation to go on indefinitely, delaying use of the spectrum by the PCS licensee who paid for it. The Commission's rules give adequate time for relocation under the voluntary and mandatory negotiation periods. At the end of the mandatory period, it is appropriate either to require immediate conversion of the license to secondary status or the vacation of the 2 GHz frequencies by the microwave incumbents. If the Commission decides that additional comment is required before it can act on this issue, we also support the Joint Petitioner's request for an expedited rulemaking.

II. THE RULE SHOULD BE CHANGED TO ALLOW PCS LICENSEES TWENTY DAYS TO FILE DOCUMENTATION OF A RELOCATION AGREEMENT WITH THE DESIGNATED CLEARINGHOUSE.

The current rule requires that after a clearinghouse is selected, a PCS relocator must submit documentation of a relocation agreement within ten business days of the date that the agreement is signed.[3] The Personal Communications Industry Association ("PCIA") has requested that the Commission extend the time to twenty

[2] Joint Petitioners, p. 1.

[3] 47 CFR §24.245(a).

business days.[4] We support this request. We have signed many relocation agreements. These agreements will have to be submitted in a standard format. These agreements are unique to each incumbent so that reducing them to a standard format will take a considerable amount of time. The additional time will ensure that the submissions can be prepared carefully. In addition, as PCIA notes, there is no downside to extending the filing period by ten more days.[5]

III. THE CAP OF 2% OF THE "HARD COSTS" FOR TRANSACTIONAL EXPENSES SHOULD BE RETAINED.

The rule adopted by the Commission states that during an involuntary relocation, the ET licensee guarantees payment of relocation costs, including all engineering, equipment, site and FCC fees, as well as any legitimate and prudent transaction expenses incurred by the FMS licensee that are directly attributable to an involuntary relocation, subject to a cap of two percent of the hard costs involved.[6]

Several commenters seek reconsideration of this rule. They want the cap removed and replaced with a rule that allows reasonable transaction costs to be reimbursed. We strongly oppose any change in this rule.

Setting a cap is a reasonable way to eliminate time-consuming disputes regarding whether a transactional expense should be reimbursed. The issue really is whether the 2% is reasonable. The Association of Public-Safety Communications Officials-International, Inc. ("APCO") argues that external engineering costs alone can be

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[4] PCIA, p. 2.

[5] Id. at p. 4.

[6] 47 CFR §101.75(a)(1).

over $20,000.[7] Perhaps on a system basis, but on a per link basis which is what the cap applies to, we think that it is highly unlikely that external engineering would reach that level. Assuming a $250,000 relocation cost for a link, with a 2% cap, transactional expenses up to $5,000 could be reimbursed. That would equate to a week of a consultant's time at $1,000 a day. This should be an adequate amount on a per link basis. The Commission should retain the 2% cap.

IV. THE RULE THAT STATES A PCS LICENSEE IS NOT RESPONSIBLE TO PAY RELOCATION COSTS OF INCUMBENTS AFTER APRIL 4, 2005 SHOULD BE RETAINED.

Several commenters seek reconsideration of the Commission's decision that after April 4, 2005, a PCS licensee may require the incumbent to cease operations and is not required to pay relocation costs.[8] The Commission chose that sunset date because it concluded that it provides "certainty to the process and prevents the emerging technology licensee from being required to pay the relocation expenses indefinitely."[9] The Commission also concluded that ten years is sufficient time to negotiate a relocation agreement or to plan for relocation.[10] Moreover, the incumbents have known since 1992 that they would be required to relocate. Incumbents in the 12 GHz band received only five years to relocate and they were not reimbursed for their costs.

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[7] APCO, p. 5.

[8] See e.g., APCO, pp. 7-9; Tenneco, pp. 9-11.

[9] Order, para. 66.

[10] Id.

There is no basis for giving the incumbents an unlimited time for reimbursement. They hold no ownership interest in their licenses.[11] The Commission's rules generously grant them the ability for reimbursement for up to ten years. The PCS licensees are entitled to certainty with respect to an endpoint for any reimbursement obligation. As the Commission noted, its decision was a fair balancing of competing interests.[12] The outcome sought by the commenters would destroy that fair balance and should be rejected.

V. THE DEFINITION OF COMPARABLE FACILITIES IS FAIR AND REASONABLE.

The three factors that determine system comparability are: communications throughput, system reliability and operations costs. The Association of American Railroads ("AAR") requests reconsideration of the rules relating to communications throughput, system reliability and operating cost.[13] Tenneco Energy also requests reconsideration with respect to communications throughput.[14]

A. Communications Throughput.

The rule with respect to communications throughput states that during involuntary relocation, PCS licensees will only be required to provide incumbents with enough throughput to satisfy the use at the time of relocation, not match the overall

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[11] 47 USC §301.

[12] Order, para. 65.

[13] AAR, p. 4.

[14] Tenneco, p. 8.

capacity.[15] AAR argues that this "unfairly penalizes those incumbents who maintain excess throughput capacity in their existing systems in anticipation of future system expansion...."[16] However, AAR ignores the important consideration of spectrum efficiency on which the Commission based its decision. As the Commission stated: "Our goals is to foster efficient use of the spectrum, which would be thwarted if all incumbents are relocated to systems with capacity that exceeds their current needs. Also, limiting spectrum to current needs serves the public interest, because we believe that it will promote the development of spectrum-efficient technology capable of increasing capacity without increasing bandwidth."[17] AAR's position is contrary to the public interest and should be rejected.

B. System Reliability.

The Commission requires that the relocator provide reliability "equal to the overall reliability of the incumbent system" but does not require "the system designer to build the radio link portion of the systems to a higher reliability than that of the other components of the systems."[18] AAR argues that this rule unfairly punishes those who maintain a highly reliable radio link portion in the existing systems in anticipation of future system upgrades. Again, the rule required a balance of competing interests and the Commission struck the correct balance. Moreover, AAR ignores the fact that the new equipment which will be obtained in the relocation generally will be more reliable than the old equipment.

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[15] 47 CFR §101.75 (b)(1).

[16] AAR, p. 7.

[17] Order, para. 29.

[18] Id. at para. 30.

C. Operating Costs.

The PCS licensees are required to compensate the incumbent for any recurring costs associated with the replacement facilities for five years.[19] AAR seeks to have the rule changed to ten years.[20] The Commission should retain the five year time frame. It comports with the license term. Moreover, an increase to ten years tips the balance too heavily in the incumbent's favor. As the Commission notes after five years, the incumbents would have to bear additional costs themselves such as increased rents, even if they had not relocated.[21]

VI. THE COST SHARING PLAN DOES NOT DEPEND ON ACTUAL INTERFERENCE.

AAR and Tenneco both request that the Commission clarify that the cost sharing plan creates a reimbursement obligation where a relocated link would have posed an interference problem to a PCS licensee's base station or mobile transceivers in the vicinity of the microwave transmitter.[22] They both misunderstand the effect of the Commission's decision to use the Proximity Threshold test to determine cost sharing obligations. The Proximity Threshold does not measure interference. It simply looks to whether a subsequent PCS entity is preparing to turn on a fixed base station located within the rectangle (as calculated by the rule) around the relocated link.[23] The location

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[19] Order, para. 31.

[20] AAR, pp. 5-6.

[21] Order, para. 31.

[22] AAR, p. 13; Tenneco, pp. 4-5.

[23] Order, appendix, para. 32.

of the base station in the rectangle triggers the reimbursement obligation, not actual interference to microwave link or a PCS base station.

VII. THE COMMISSION MUST ALLOW REASONABLE ACCESS TO AN INCUMBENT'S FACILITIES.

The Commission's rule states that if parties have not reached an agreement at the end of the first year of the voluntary period, the incumbent must allow the PCS licensee to gain access to the microwave facilities to be relocated so that an independent third party can examine the incumbent's system and prepare a cost estimate.[24] AAR and Tenneco ask the Commission to clarify that one independent examiner designated by each PCS licensee should only have the right to inspect the facilities of the incumbent's system one time, subject to reasonable advance notice.[25] Tenneco asks that if additional visits or inspections are requested, that the PCS licensee be required to bear the cost of the of providing accompanied access for each subsequent visit.[26]

The Commission should not set a limit on the number of visits. In certain situations multiple visits may be required. For example, a tower may require an additional visit to determine structural integrity. An additional visit may also be required to reconcile differences between field observations and other documentation. We have no objection to the Commission clarifying that requests for access must be reasonable and subject to reasonable notice, such as ten days. However, since the PCS licensee bears the burden of the cost estimate it should not also be required to pay the incumbent's cost for

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[24] 47 CFR §101.71.

[25] Tenneco, p. 4; AAR, pp. 13-14.

[26] Tenneco, p. 4.

providing accompanied access should additional visits be required. The PCS licensee is required to pay for the independent estimate. Thus, it is in the PCS licensee's interest to keep the number of visits to the minimum necessary.

VII. CONCLUSION.

The Commission's First Report and Order strikes an appropriate balance between the competing interests of the microwave incumbents and the PCS licensees. However, as the Joint Petitioners indicate there remains uncertainty regarding the status of the incumbents' licenses at the end of mandatory period. This uncertainty should be resolved with a rule that requires them to vacate their licenses or converts them to secondary status. We also support PCIA's request to change the filing period from ten days to twenty days with respect to filing relocation agreements with the clearinghouse.

The other requests for reconsideration we oppose because they all favor the microwave incumbents at the expense of the licensees. The interests of the incumbents are well protected under the current rules, they do not need additional protection.

Respectfully submitted,

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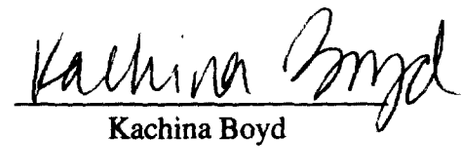
August 8, 1996

CERTIFICATE OF SERVICE

I, Kachina Boyd, do hereby certify that a copy of the foregoing COMMENTS OF PACIFIC BELL MOBILE SERVICES ON PETITIONS FOR RECONSIDERATION was mailed on this 8th day of August 1996, via first class United States mail, postage prepaid to the attached service list.



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